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United States District Court  
NORTHERN DISTRICT OF ILLINOIS

Eastern Division FILED

United States ) Plaintiff  
v. )  
Daniel Hill ) Defendant

07 CR 843

Case No. 07 CR 843

Hon Judge Lefkow, Joan

JUL 29 2008 MB  
JUL 29, 2008  
MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

Daniel Hill the defendant (pro se) moves the Court to exclude statements the government contends are admissible against each of the named defendants under Fed. R. Evid. 801(d)(2)(E). This motion is based upon the Memorandum in Support of Motion to Exclude Co-conspirators.

MEMORANDUM IN SUPPORT OF MOTION TO EXCLUDE ALLEGED CO-CONSPIRATOR'S STATEMENTS

A co-conspirator's statement is admissible under Fed. R. Evid. 801(d)(2)(E) if it shows a defendant's participation in a conspiracy. United States v. Peralta, 941 F.2d 1003, 1007 (9th Cir. 1991). However,

(b) before admitting a statement of a co-conspirator into evidence against a defendant, the court must have independent evidence of existence of a conspiracy and the defendant's connection to it, and must conclude that the statements made was both during and in furtherance of the conspiracy. United States v. Layton, 720 F.2d 548, 555 (9th Cir. 1983); and Peralta, 941 F.2d at 1007. This requires the government prove three essential elements by a preponderance of the evidence before a co-conspirator's statement is admitted: (1) the existence of a conspiracy; (2) the declarant and the non "offering party" Daniel Hill are involved in a conspiracy; and (3) the statements are made during the course and in furtherance of the conspiracy. Bougnaily v. United States, 107 S. Ct. 2775, 2778 (1987). Although a pretrial evidentiary hearing is not mandated, such hearing is requested here because of the number of statements involved. See

Boulgajly, 1075. Ct at 2779 n 1; United States v. Tamez, 941 F.2d 770, 775 (9th Cir. 1991); but see United States v. James, 590 F.2d 575 (5th Cir. 1979) (suggesting that a pretrial determination is appropriate). Without a pretrial hearing on the admission of the statements a tremendous amount of court time will be used which will disrupt an orderly presentation of this trial.

### Proof of Conspiracy

To prove conspiracy the government must show (1) an agreement to accomplish an illegal objective, (2) one or more overt acts in furtherance of the illegal objective, and (3) the required intent to carry out the substantive offense. United States v. Schmidt, 947 F.2d 362, 367 (9th Cir. 1991); United States v. Penagos, 823 F.2d 346, 348 (9th Cir. 1987); and, United States v. Melchor-Lopez 627 F.2d at 886, 890 (9th Cir. 1980). There need not be direct evidence of an agreement, circumstantial evidence may suffice to show the existence of an agreement. Inference of an agreement may be made "if there be concert of action, all the parties working together understandingly, with a single design for the accomplishment of a common purpose". Melchor-Lopez 627 F.2d at 890-891. It is not necessary that all of the specifics be worked out to prove an agreement. United States v. Pemberton, 730 F.2d 730, 733 (9th Cir. 1988).

The alleged statements themselves are not sufficient to establish a conspiracy.

There:

A Conspiracy.

There must be some independent evidence of a conspiracy in addition to the statements, before co-conspirator's statements can be admitted. James, 941 F.2d at 775; and United States v. Goordon, 844 F.2d 1397, 140 (9th Cir. 1988)

Proof of the declarant and the defendant's connection to the conspiracy once an agreement is shown, evidence of a defendant's slight connection to the conspiracy is sufficient to prove knowing participation. United States v Dunn, 564 F2d 348, 357 (9th Cir. 1977) "Knowledge of the objective of the conspiracy" is material to a conspiracy conviction. Schmidt, 947 F2d at 367.

[M]ere association with members of a conspiracy, the existence of an opportunity to join the conspiracy, or simple knowledge apprised of, or acquiescence in the objective or purpose of the conspiracy, without an intention and agreement to accomplish a specific illegal objective, is not sufficient to make one a conspirator.

Melchor-Lopez, 627 F2d at 890. Furthermore, family ties or other close associations are not enough to establish a conspiracy. United States v Castanda, 9 F.3d 761 (9th Cir. 1993).

#### Proof of statements

The statements must demonstrate a concert of action between the defendant and the declarant. United States v Layton, 885 F2d 1388, 1398 (9th Cir 1989). The statements must be made (1) during the course of the conspiracy, and (2) in furtherance of the conspiracy. United States v Arias-Villanueva, 998 F2d 1491, 1502 (9th Cir 1993)

#### During the course of the conspiracy

statements made after the conspiracy ceases or made after an arrest are not statements made during a course of conspiracy. See

United States v Smith, 623 F2d 627 (9th Cir 1980). However, statements of co-conspirator's prior to the defendant's entry in the conspiracy are admissible as long as it is shown that the defendant is aware of the conspiracy's features and general aims. United States v Mikhsic, 5 F3d 1386, 1312 (9th Cir 1993).

Mere Convestations or narrative declaration of past events are not "admissible" under fed.R Evid.801(d)(2)(E). Arias-Villanueva, 998 Fd at 150 and United States v Yarbrough, 852 F2d 1522 (9th cir 1988). The statements must further the common goals of the conspiracy. Yarbrough, 852 F2d at 1535. Hence, the statements must be made to induce enlistment, further participation, prompt further action, allay fears or keep co-conspirators abreast of an ongoing conspiracy's activities Arias-Villanueva, 988 F2d at 1502 (citation om

Here the Court must be satisfied that each defendant was connected to agreement, before determining whether any of the statements are admissible. It is therefore requested that the court require the government to proffer its proof as to the existence of the conspiracy and proffer how each of the Fifteen defendant are members of that conspiracy. Should the Court determine that the government can show by a preponderance of evidence that a pertains to each statement.

(Prose Under Necessity)

Respectfully Submitted

D.D Hill  
Daniel Hill